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Item 11 of the provisional agenda

WITHDRAWAL OF THE UNITED STATES OF AMERICA FROM UNIDO

Some legal and financial implications

Note by the Secretariat

CONTENTS

		Paragraphs	*Page*
Introduction		1	2
Chapter			
I.	LEGAL EFFECTS	2 - 13	2
	A. Constitutional provisions relating to withdrawal	2 - 4	2
	B. Effects of withdrawal on participation in the organs and activities of UNIDO	5 - 6	2
	C. Effects of withdrawal on the activities of the Organization in the territory of the United States of America	7 - 13	2
II.	EFFECTS OF THE TERMINATION OF THE TAX REIMBURSEMENT AGREEMENT AND OTHER AGREEMENTS ENTERED INTO BETWEEN THE UNITED STATES OF AMERICA AND UNIDO	14 - 24	3
	A. The tax reimbursement agreement	14 - 21	3
	B. Other agreements	22 - 24	4
III.	OUTSTANDING PAYMENT OF ASSESSED CONTRIBUTIONS	25 - 28	4
IV.	ACTION REQUIRED OF THE COMMITTEE	29	4

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Introduction

1. The twelfth session of the Programme and Budget Committee and the sixteenth session of the Industrial Development Board are the last meetings to be held by these organs before the official withdrawal of the United States of America from UNIDO. The present document draws the attention of both the Committee and the Board to some of the legal and financial implications of the withdrawal from the Organization.

I. LEGAL EFFECTS

A. Constitutional provisions relating to withdrawal

2. Article 6 of the Constitution of UNIDO deals with the withdrawal of a Member State from the Organization. In its paragraph 1, it is stated that "A Member may withdraw from the Organization by depositing an instrument of denunciation of this Constitution with the Depositary." The Depositary of the Constitution of UNIDO is the Secretary-General of the United Nations.

3. Paragraph 2 provides that "Such withdrawal shall take effect on the last day of the fiscal year following that during which such instrument was deposited." Thus, as the Government of the United States of America deposited its instrument of denunciation on 4 December 1995, its withdrawal from the Organization will take effect on 31 December 1996. Membership rights and obligations will continue until that date.

4. A withdrawing Member is under an obligation to pay its assessed contributions for the year during which it deposited the instrument of denunciation. Furthermore, according to paragraph 3 of Article 6, "The contributions to be paid by the withdrawing Member for the fiscal year following that during which such instrument was deposited shall be the same as the assessed contributions for the fiscal year during which such deposit was effected." In addition, the withdrawing Member shall fulfil any unconditional pledges it made prior to such deposit. It also has an obligation under international law to pay its arrears, if any (see paras. 23-25 below).

B. Effects of withdrawal on participation in the organs and activities of UNIDO

5. The participation of a withdrawing State in the organs of UNIDO would only come to an end on the date its withdrawal takes effect. Until such date, the withdrawing State retains its full membership in the Organization and may participate in the activities of the organs of the Organization.

6. Once a withdrawing State ceases to be a member of the Organization, the only way for it to participate in the work of UNIDO is under the status of observer, as provided for in Article 4 of the Constitution.

C. Effects of withdrawal on the activities of the Organization in the territory of the United States of America

7. An intergovernmental organization such as UNIDO can conduct its activities in a country only if its legal status is recognized there and if it enjoys a certain number of immunities and privileges in such a country.

8. The Constitution of UNIDO provides for the legal capacity and the privileges and immunities necessary to the Organization for the exercise of its functions and for the fulfilment of its objectives in the territories of its Member States. In particular, according to Article 21, paragraph 1, "The Organization shall enjoy in the territory of each of its Members such legal capacity and such privileges and immunities as are necessary for the exercise of its functions and for the fulfilment of its objectives." Paragraph 2 of the same article further specifies that the legal capacity and the privileges and immunities shall:

"(a) In the territory of any Member that has acceded to the Convention on the Privileges and Immunities of the Specialized Agencies in respect of the Organization, be as defined in the standard clauses of that Convention as modified by an annex thereto approved by the Board;

"(b) In the territory of any Member that has not acceded to the Convention on the Privileges and Immunities of the Specialized Agencies in respect of the Organization but has acceded to the Convention on the Privileges and Immunities of the United Nations, be as defined in the latter Convention, unless such State notifies the Depositary on depositing its instrument of ratification, acceptance, approval or accession that it will not apply this Convention to the Organization; the Convention on the Privileges and Immunities of the United Nations shall cease to apply to the Organization thirty days after such State has so notified the Depositary;

"(c) Be as defined in other agreements entered into by the Organization."

9. Since the United States has not acceded to the Convention on the Privileges and Immunities of the Specialized Agencies, it is in accordance with the Convention on the Privileges and Immunities of the United Nations, extended to UNIDO under Article 21, paragraph (2) (b) of its Constitution, that UNIDO enjoys, in the United States, the status, privileges and immunities required for the performance of its functions.

10. In addition, the International Organizations Immunities Act, a federal act passed by the United

States Congress in 1945 that extends privileges, exemptions and immunities to international organizations "in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation" has been made applicable to UNIDO and its officials by Executive Order No. 12628 of 8 March 1988.

11. With the entry into effect of the United States withdrawal, Article 21 will no longer be applicable. Thus, UNIDO, its assets and its officials would no longer enjoy in the territory of the United States such privileges and immunities as are defined in the Convention on the Privileges and Immunities of the United Nations unless the United States authorities decided to continue to apply to UNIDO the provisions of their domestic legislation, i.e. the International Organizations Immunities Act.

12. The status of the UNIDO Liaison Office to the United Nations in New York would, however, be different. It is the view of the UNIDO Secretariat that this office, its staff members and experts designated by the Organization should continue to enjoy the immunities and privileges necessary for the continued performance of their functions as representatives of a specialized agency to the United Nations, by virtue of the Relationship Agreement between the United Nations and UNIDO and the Headquarters Agreement concluded on 14 December 1946 between the United Nations and the United States.

13. It should be noted that the United States continued to apply the International Organizations Immunities Act to the International Labour Organization (ILO) and to the United Nations Educational Scientific and Cultural Organization (UNESCO) after its withdrawal from these Organizations. In the case of ILO this was effected through legislation adopted by the United States Congress in 1979. The United States later rejoined ILO in 1980. With regard to UNESCO, the continued extension of immunities and privileges appears to be based on the fact that the United States continues to participate in a number of UNESCO programmes and has an observer status with the Organization.

II. EFFECTS OF THE TERMINATION OF THE TAX REIMBURSEMENT AGREEMENT AND OTHER AGREEMENTS ENTERED INTO BETWEEN THE UNITED STATES OF AMERICA AND UNIDO

A. The tax reimbursement agreement

14. A tax reimbursement agreement was concluded between UNIDO and the Government of the United States of America on 26 March 1993. This agreement provides that the United States shall refund UNIDO the amounts that the Organization has disbursed to its staff members who are liable for and pay United States federal, state, and local income taxes on their "institutional income" (i.e. salaries or emoluments paid to them by the Organization) as defined in the annex to the agreement.

15. The conclusion of the agreement was prompted by the adoption by the fourth session of the UNIDO General Conference on 22 November 1991 (resolution GC.4/Res.23) of financial regulation 5.3 and staff regulation 6.8 (c). The United States is the only Member State with which UNIDO had to conclude such a tax reimbursement agreement.

16. Financial regulation 5.3 reads as follows:

"Tax Equalization

"Financial Regulation 5.3: When a staff member, notwithstanding Section 18 (b) of the Convention on the Privileges and Immunities of the United Nations or Section 19 (b) of the Convention on the Privileges and Immunities of the Specialized Agencies, as applicable, is subject to national income taxation and pays taxes in respect of the salaries or emoluments paid to him or her by the Organization, and if a tax reimbursement agreement exists between the Organization and the Member State levying such taxes, then that Member State shall refund the Organization the amounts it has disbursed to staff members for such taxes under the terms of such an agreement."

17. In staff regulation 6.8 (c) it is stated that:

"Where a staff member, notwithstanding Section 18 (b) of the Convention on the Privileges and Immunities of the United Nations or Section 19 (b) of the Convention on the Privileges and Immunities of the Specialized Agencies, as applicable, is subject to national income taxation in respect of the salaries or emoluments paid to him or her by the Organization, the Director-General is authorized to refund to the staff member an amount representing the tax paid for the year on his or her organization salary and emoluments."

18. Although the conclusion of the agreement was clearly premised on the membership of the United States in UNIDO, the agreement contains its own termination clause and would not have been directly affected by the denunciation of the UNIDO Constitution. The termination clause reads as follows: "This Agreement shall enter into force upon signature by the Parties and may thereafter be terminated by either Party on December 31 of the year following the year in which notice is given in writing to the other Party."

19. The United States Government informed UNIDO on 15 December 1995 of its intention to terminate the agreement. The tax reimbursement agreement will therefore come to an end on 31 December 1996.

20. It should be noted that total reimbursements of income tax on salaries and emoluments made by UNIDO to its United States staff members is estimated at $200,000 per annum. The Committee may wish to provide guidance on this issue.

21. Although the United States has regularly refunded UNIDO for the tax payments of staff members of United States nationality since the entry into force of the tax reimbursement agreement in 1992, no payments have so far been received for the disbursements made by the Organization from 1986-1991, in spite of repeated requests for reimbursement addressed to the United States authorities.

B. Other agreements

22. Several trust fund agreements were concluded between UNIDO and the United States of America for the implementation of technical cooperation projects. These agreements, which are based on the model agreement outlined in UNIDO/DG/B.18/Rev.1, contain a termination clause that allows each party to terminate the agreement by giving 30 days written notice to the other party.

23. The last of these agreements was one regarding the funding of the UNIDO Investment Promotion Service in Washington for which the United States Government notified UNIDO on 8 February 1995 of its intention to stop such funding as of 1 October 1995.

24. The memorandum of understanding concluded between UNIDO and the Environmental Protection Agency of the United States of America on 3 June 1992 is still in effect. It may be terminated upon three months' written notice, in accordance with its Article IV.

III. OUTSTANDING PAYMENT OF ASSESSED CONTRIBUTIONS

25. Member States were advised in document IDB.15/3-PBC/AS.3/3 (annex I) of 16 April 1996 of the status of the assessed contribution of the United States of America. No payments have been received since then from the United States Government.

26. The status remains unchanged as of 20 August 1996 in terms of United States dollars and Austrian schillings due; the total United States dollar equivalent reflects a movement in the rate of exchange from US$ 1 = AS 10.10 to US$ 1 = AS 10.40.

27. During the sixth session of the General Conference, in December 1995, the delegate of the United States of America declared that the United States administration recognized its obligations to the Organization, but that there was no assurance that the United States of America would be able to pay its full dues, or even most of them, in a timely manner.

28. The Committee may wish to issue a solemn appeal to the United States of America to meet its recognized financial obligations.

IV. ACTION REQUIRED OF THE COMMITTEE

29. The Committee may wish to take note of the information contained in the present document and make appropriate recommendations for further action.

Contributions payable as of 20 August 1996

Prior years		Current year		(ROE: 10.40)	TOTAL	Date of
Dollars	Schillings	Dollars	Schillings	dollar equivalent	dollar equivalent	last payment
3,617,364	342,203,230	2,944,650	278,564,374	59,689,193	66,251,207	94-11-18